DENVER RESOURCES, INC.

IBLA 83-539 Decided January 8, 1985

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, disqualifying simultaneous oil and gas lease application and barring participation in future drawings.

Reversed and remanded.

1. Oil and Gas Leases: Applications: Filing

   Prior to the July 23, 1983, amendment to 43 CFR 3110.2 (1983), which prohibited the withdrawal of an application filed under the automated simultaneous oil and gas leasing system, an application could be withdrawn provided the withdrawal was in writing and was received by BLM prior to the close of the filing period.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Filing

   Where an applicant for a simultaneous oil and gas lease fails to designate a state prefix on the automated application form, such application is properly deemed unacceptable under 43 CFR 3112.3(a) (1983), and the applicant is properly assessed a service charge of $75 per application form and all other filing fees are returned.

APPEARANCES: Dwight L. Hamilton, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Denver Resources, Inc., has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated April 5, 1983, disqualifying its simultaneous oil and gas lease application and barring its participation in future simultaneous oil and gas lease drawings.

On March 18, 1983, appellant executed Part B of an automated simultaneous oil and gas lease application form (Form 3112-6a (June 1981)), covering six parcels in the March 1983 simultaneous oil and gas lease drawing. The

application was forwarded to BLM with a check (No. 1014) dated March 18, 1983, in the amount of $450 drawn on the First National Bank of Englewood, Colorado, to cover the filing fees in accordance with 43 CFR 3112.2-2(a) (1982). In its April 5, 1983, decision, BLM disqualified appellant's lease application because appellant's check was returned to BLM "as uncollectible because of payment stopped," and was therefore deemed to be an "uncollectible remittance" under 43 CFR 3112.2-2(c) (1982). In addition, BLM stated that the $450 (along with a $10 service charge) constituted an outstanding debt to the United States which must be paid before appellant would be allowed to participate in future drawings.

In its statement of reasons for appeal, appellant alleges that, after submitting its application, it realized that an error had been made in completing the application form. Appellant's employees telephoned the Wyoming State Office and requested that the application and check be excluded from the drawing, but they were informed that this was impossible and that the filing fee would be retained by BLM. Subsequent to this conversation, appellant placed a "stop payment" order on the check which had accompanied the application, resulting in the issuance of BLM's decision of April 5, 1983. This appeal followed.

Appellant contends that it is inequitable to assess a penalty for a single mistake where the penalty, itself, varies not in relation to the gravity of the error but merely because of the number of parcels that were sought under the application. Appellant suggests that "Denver Resources, Inc. be allowed to pay $75.00 plus the $10.00 service charge and be permitted to participate in future selections."

[1] Initially, we would note that, consistent with our recent holding in Donald R. Adams, 83 IBLA 322 (1984), an oil and gas application or offer could only be withdrawn by a written instrument. 1/ Thus, the State Office correctly refused to follow appellant's telephone request.

Moreover, even had appellant succeeded in withdrawing its application, the filing fees would have been retained. See NFL Partnership, 82 IBLA 75 (1984). Thus, Congress has provided in section 1401(d) of the Omnibus Budget Reconciliation Act of 1981, 95 Stat. 748, that all filing fees for

1/ In this regard, however, we wish to clarify a statement made in Donald R. Adams, supra, which might prove misleading to future applicants. Therein, we stated that, in certain circumstances arising under the automated simultaneous drawing system, an applicant might file a written withdrawal of its application. Id. at 324. Under the regulations in effect at the time the applications in Adams and in the instant case were filed, this was a correct statement of the law. Our decision failed to point out, however, that a subsequent amendment to the regulations eliminated this possibility by expressly providing that "[a]n application or offer made under Subpart 3112 of this title shall not be withdrawn." See 43 CFR 3110.2 (1983). Thus, the regulations now in effect would appear to preclude the type of remedial action contemplated in Adams.

applications must be retained as a service charge "even though the application or offer may be rejected or withdrawn in whole or in part." Thus, had appellant timely withdrawn its application, the filing fees would not have been refunded.

[2] However, in Shaw Resources, Inc., 79 IBLA 153, 91 I.D. 122 (1984), this Board noted that, where an application was deemed "unacceptable," the statutory language requiring the Department to retain all filing fees for "rejected" applications did not apply. Rather, a single processing fee of $75 was assessed against the application, which was properly excluded from the drawing, and the remainder of the filing fees submitted with the application were returned to the applicant.

In Frances Kunkel, 80 IBLA 333 (1984), this Board examined a situation virtually on all-fours with the instant appeal. Therein, appellant had folded her applications, contrary to instructions on the form. She, too, telephoned the Wyoming State Office to request that she be allowed to withdraw the applications. She was informed that, if she did so, the filing fees would, nevertheless, be retained. Just as appellant in this case, so, too, did she have payment on her check stopped.

After reviewing the factual background of that case, the Board noted that subsequent to the filing period therein involved, the Department had issued regulations specifically designed for the administration of the automated simultaneous system. Included therein was a regulation specifically providing that an application received in a condition which prevented automated processing would be deemed "unacceptable." See 43 CFR 3112.3(a)(3) (1983). While the Board in Frances Kunkel, supra, recognized that 43 CFR 3112.2-2 (1983) provided that an uncollectible remittance would result in a disqualification of the application and the amount of the remittance would be a debt due and owing the Government, the Board determined that, where the underlying application was "unacceptable," the provisions of 43 CFR 3112.3(b) which simply imposed a $75 processing fee and authorized the return of all other filing fees were properly applied. 2/

The factual milieu of the instant appeal clearly brings it within the ambit of the Kunkel case. While appellant herein did not specify the error which it believed rendered its application unacceptable, a review of the application form discloses that it failed to designate a State prefix. Such an omission clearly renders the application unacceptable. See Shaw Resources, Inc., supra at 174. Thus, appellant should have been assessed a single $75 processing fee. Upon payment of such a service charge, appellant shall be permitted to participate in future selections.

2/ It is the fact that the subsisting application was unacceptable which distinguished Frances Kunkel, supra, from two other decisions in which the Board has held that an acceptable application, which is ultimately rejected because of the refusal of a bank to honor a check drawn upon it, gives rise to a debt to the United States for the amount of the check. See NFL Partnership, supra; Marceann Killian, 79 IBLA 105 (1984).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case file is remanded for further action not inconsistent herewith.

James L. Burski
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Will A. Irwin
Administrative Judge